



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director
(804) 698-4000

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
SHIELD CONTRACTING LLC
FOR
CVS PHARMACY AND FLAT ROCK DEVELOPMENT
VPDES Permit No. VAR10
Storm Water Registration No. J293**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48 between the State Water Control Board and Shield Contracting LLC, regarding the CVS Pharmacy and Flat Rock Development, for the purpose of resolving certain violations of the State Water Control Law, and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "2014 Permit" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2014 and which expires on June 30, 2019.

3. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
4. “Construction activity” means any clearing, grading or excavation resulting in land disturbance of equal to or greater than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre.
5. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. “Discharge” means discharge of a pollutant. 9 VAC 25-31-10
8. “Discharge of a pollutant” when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
9. “Facility” or “Site” means the CVS Pharmacy and Flat Rock Development located at Anderson Highway and Dorset Road in Powhatan County, Virginia, from which discharges of stormwater associated with construction activity occur.
10. “General Permit Regulation” means the General VPDES Permit for Discharges of Stormwater from Construction Activities, 9 VAC 25-880-1 et seq.
11. “Land disturbance” or “land-disturbing activity” means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in Va. Code § 62.1-44.15:34.
12. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
13. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the State Water Control Law.
14. “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive

materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.

15. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
16. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
17. "Registration statement" means a registration statement for coverage under the 2014 Permit.
18. "Shield" means Shield Construction LLC, a company authorized to do business in Virginia. Shield is a "person" within the meaning of Va. Code § 62.1-44.3.
19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
20. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
21. "Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage. Va. Code § 62.1-44.15:24.
22. "Stormwater management plan" means a document or series of documents containing material describing methods for complying with the requirements of a VSMP or the VSMP Regulations. 9 VAC 25-870-10.
23. "SWPPP" means Stormwater Pollution Prevention Plan, which is a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures, and shall include, but not be limited to the

inclusion of, or the incorporation by reference of an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan. 9 VAC 25-870-10.

24. “Virginia Stormwater Management Act” means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Va. Code.
25. “Va. Code” means the Code of Virginia (1950), as amended.
26. “VAC” means the Virginia Administrative Code.
27. “VPDES” means Virginia Pollutant Discharge Elimination System.
28. “VSMP” means the Virginia Stormwater Management Program, which is a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations. Va. Code § 62.1-44.15:24.
29. “VSMP authority” means an authority approved by the Board after September 13, 2011, to operate a VSMP or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or for linear projects subject annual standards and specifications in accordance with subsection B of § 62.1-44.15-31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Va. Code § 62.1-44.15:24.
30. “VSMP authority permit” means an approval to conduct a land-disturbing activity issued by the VSMP authority for the initiation of a land-disturbing activity after evidence of State Permit coverage has been provided where applicable. Va. Code § 62.1-44.15:24.
31. “VSMP Regulations” means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.

SECTION C: Findings of Fact and Conclusions of Law

1. Shield is the operator of the Site, from which stormwater associated with construction activities is discharged.
2. The Department is the VSMP authority for the Site.

3. Shield applied for and, on September 18, 2017, the Department granted coverage under the 2014 Permit, VAR10 of the General Permit Regulation. The Department assigned Shield registration number VAR10I984.
4. The 2014 Permit allows Shield to discharge stormwater associated with construction activities from the Site to Swift Creek, in strict compliance with the terms and conditions of the 2014 Permit.
5. Swift Creek is a surface water located wholly within the Commonwealth and is a “state water” under the State Water Control Law.
6. Swift Creek is located in the James River Basin. Swift Creek is not listed in DEQ’s 305(b) report as impaired.
7. During inspections on February 27, and April 19, 2018, DEQ staff visited the Site and observed that the last inspection report by the operator available for review as part of the SWPPP was November 17, 2017. This project is located in an area subject to a Total Maximum Daily Load (TMDL) that was established and approved prior to the term of this Permit.

2014 Permit Part (I)(B) describes limitations on coverage and establishes in (4) a TMDL limitation (d)(1) which states: “Inspections shall be conducted at a frequency of (i) at least once every four business days or (ii) at least once every five business days and no later than 48 hours following a measureable storm event. In the event that a measurable storm event occurs where there are more than 48 hours between business days, the inspection shall be conducted on the next business day...”

8. During both the February 27, and April 19, 2018 inspections, it was noted that the registration statement included in the SWPPP did not reflect the current operator. The SWPPP also did not contain the approved erosion and sediment (E&S) control plans.

The 2014 Permit states in Part (II)(A) that a SWPPP shall include (1)(a) “A signed copy of the registration statement, if required, for coverage under the VPDES permit for discharges of stormwater from construction activities...(2) An erosion and sediment control plan approved by the VESCP authority as authorized under the Erosion and Sediment Control Regulations (9VAC25-840)...”

9. During the inspection on April 19, 2018, silt fence on the slope at the edge of the wetland area had failed and sediment had entered into a wetland area outside the limits of disturbance.

2014 Permit Part II(E)(1) states in part: “All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications.”

9 VAC 25-840-60(A) states in part: “All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function...”

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

10. During both the February 27, and April 19, 2018 inspections, DEQ staff observed that the slope above the wetland area had erosion forming. DEQ staff also noted that the ditches along Dorset Road needed stabilization, and there were areas along Route 60 that required stabilization.

9 VAC25-840-40.1 states: “Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year.”

9 VAC25-840-40.7 states: “Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. Slopes that are found to be eroding excessively within one year of permanent stabilization shall be provided with additional slope stabilizing measures until the problem is corrected.”

9 VAC25-840-40.11 states: “Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel.”

9VAC25-870-54 (B) states: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.”

2014 Permit Part (II)(A)(2)(c) states: “Erosion and Sediment Control Plan.. A properly implemented approved erosion and sediment control plan, “agreement in lieu of a plan”, or erosion and sediment control plan prepared in accordance with department approved annual standards and specifications, adequately: ...(8) Ensures that stabilization of disturbed areas will be initiated immediately whenever any clearing, grading, excavating, or other land-disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 day;”...

2014 Permit Part (II)(A)(5) states: “SWPPP requirements for discharges to impaired waters, surface waters with an applicable TMDL wasteload application established and

approved prior to the term of this general permit, and exceptional waters. The SWPPP shall: ...(b)(1) Provide clear direction that: Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site;”...

11. During the February 27, 2018 and the April 19, 2018 inspections, DEQ staff observed that the inlet protection along Dorset Road was in disrepair and non-functional.

9VAC25-840-40.10 states “All storm sewer inlets that are made operable during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment.”

9VAC25-870-54 (B) states: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.”

2014 Permit Part (II)(A)(2)(c)(5) states: “Erosion and Sediment Control Plan.. A properly implemented approved erosion and sediment control plan, “agreement in lieu of a plan”, or erosion and sediment control plan prepared in accordance with department approved annual standards and specifications, adequately: ... Minimizes sediment discharges from the site in a manner that addressee (i) the amount, frequency, intensity, and duration of precipitation; (ii) the nature of resulting stormwater runoff; and (iii) soil characteristics, including the range of soil particle sizes present on the site...”

12. On May 18, 2018, the Department issued NOV No. 2018-04-PRO-203 to Shield for the violations observed during the February 27, 2018 and the April 19, 2018 inspections.
13. The Department has not issued coverage under any permits or certificates to Shield other than under the 2014 Permit.
14. On October 9, 2018, Department staff met with representatives of Shield to discuss the violations and the issuance of this Order.
15. Based on the results of the February 27, and April 19, 2018 inspections, the Board concludes that Shield violated 9 VAC 25-840-60(A), 9 VAC 25-870-54(B), 9 VAC25-840-40.1, 9 VAC25-840-40.7, 9VAC25-840-40.10, 9 VAC25-840-40.11, and the conditions of the 2014 Permit Parts (I)(B), (II)(A), (II)(A)(2)(c), (II)(A)(5), and II(E)(1), as described in paragraphs C7-C11 above.
16. Shield has submitted documentation that verifies that the violations as described in Section C, above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, 62.1-44.15.15:25, and 62.1-44.14:48, the Board orders Shield, and Shield agrees to pay a civil charge of \$8,500 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Shield shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Stormwater Management Fund. If the Department has to refer collection of moneys due under this Order to the Department of Law, Shield shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Shield for good cause shown by Shield, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Shield admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Shield consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Shield declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial

review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Shield to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Shield shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Shield shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Shield shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Shield. Nevertheless, Shield agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after Shield has completed all of the requirements of the Order;
- b. Shield petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Shield.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Shield from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Shield and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Shield certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind Shield to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Shield.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Shield voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 8th day of February, 2021.

**Tiffany R.
Severs**
Tiffany R. Severs, Director of Enforcement
Department of Environmental Quality

Digitally signed by: Tiffany R. Severs
DN: CN = Tiffany R. Severs email =
tiffany.severs@deq.virginia.gov C = US O
= Virginia DEQ OU = Enforcement Division
Date: 2021.02.08 12:00:58 -05'00'

Shield Contracting LLC voluntarily agrees to the issuance of this Order.

Date: 12/04/2020 By: [Signature], President
(Person) (Title)
Shield Contracting LLC

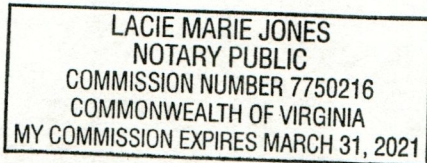
Commonwealth of Virginia

City/County of HANOVER

The foregoing document was signed and acknowledged before me this 4 day of

December, 2020, by Edgar VINO who is

President of Shield Contracting LLC, on behalf of the company.



[Signature]
Notary Public
7750216
Registration No.

My commission expires: 3/31/2021

Notary seal:

